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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,812	11/13/2000	Patrick D. Smith	PD05924AMP01	9554
22917	7590	05/04/2004	EXAMINER	
MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			BURD, KEVIN MICHAEL	
			ART UNIT	PAPER NUMBER
			2631	12
DATE MAILED: 05/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/712,812	SMITH ET AL.	
	Examiner	Art Unit	
	Kevin M Burd	2631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

1. This office action in response to the amendment filed 3/1/2004, is a non-final office action.

Response to Arguments

2. Applicant's arguments, see response, filed 3/1/2004, with respect to the rejections of claims 1-29 under 35 USC 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Schroeder et al (US 6,700,875).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Schroeder et al (US 6,700,875).

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 12, 19, 22 and 26, Schroeder discloses a system for selecting a channel in a time invariant system (column 2, lines 60-65). The communication network 100 comprises a shared physical medium 106 with non-shared branches connected to cable modems 104. Figure 2 discloses the method for selecting the channel. A number of channels are chosen to be available to be tested (block 204). The channel quality is measured for each of the available channels (block 206). One of these tested channels having the best channel quality measurement is selected (block 208). This determination inherently comprises comparing the quality measures of the channels to one another to determine the best channel quality measurement. Multiple secondary stations 104 share a single upstream channel according to a medium access control (MAC) protocol (column 3, lines 24-27) and that data is shared over the communication network 100 of figure 1.

Regarding claims 2, 13 and 20, the best channels for transmission are determined as stated above.

Regarding claims 3 and 14, the physical path is not physically inspected.

Regarding claims 4 and 15, the best and worst channels are determined based on block 208 of figure 2.

Regarding claims 5-9, 16, 17, 25 and 27, each communication medium is made up of non-shared paths (signal branches to cable modems 104) and shared paths (line 106) as shown in figure 1. The communication channels are transmitted over these mediums.

Regarding claim 10, the quality of service values held in logic while they are being sent to the primary station (figure 5).

Regarding claims 11, 18 and 21, the quality of the channels is conducted numerous times to ensure if the quality of the communication channels changes, the channel with the best channel quality measurement is selected.

Regarding claims 23, 24, 28 and 29, numerous cable modems are coupled to the cable net (figure 1).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schuster et al (US 6,363,053) discloses a method of collecting quality of service information in a cable modem network and selecting the best of the communication channels (abstract).

Contact Information

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

Art Unit: 2631

(703) 872-9314, (for formal communications intended for entry or for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Burd, whose telephone number is (703) 308-7034. The Examiner can normally be reached on Monday-Thursday from 9:00 AM - 6:00 PM.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.



Kevin M. Burd
PATENT EXAMINER
4/29/04